

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Cellular Service and Other Commercial Mobile)	WT Docket No. 97-112
Radio Services in the Gulf of Mexico)	
)	
Amendment of Part 22 of the Commission's Rules)	CC Docket No. 90-6
To Provide for Filing and Processing of)	
Applications for Unserved Areas in the Cellular)	
Service and to Modify Other Cellular Rules)	

COMMENTS OF VERIZON WIRELESS

Verizon Wireless, pursuant to Section 1.429(f) of the Federal Communications Commission's ("FCC" or "Commission") rules, hereby files its comments in response to the Petitions for Reconsideration filed by Petroleum Communications, Inc. ("PetroCom") and VoiceStream Wireless Corporation ("VoiceStream") in the above-captioned proceeding. Verizon Wireless urges the Commission to act expeditiously to resolve the petitions for reconsideration, there is no reason for further prolonged delays in this proceeding.

As discussed below, Verizon Wireless opposes PetroCom's request for reconsideration of the Commission's decision in the Report and Order to continue to use separate formulas for

calculating cellular service contours over water and land.¹ Verizon Wireless supports VoiceStream's request for a ruling that personal communications service ("PCS") providers adjacent to the Gulf of Mexico may lawfully serve the Gulf of Mexico beyond county lines.

I. THE COMMISSION SHOULD CONTINUE TO APPLY THE WATER BASED FORMULA FOR WATER-BASED CELLULAR CONTOURS.

In its Petition for Reconsideration, PetroCom argues that the Commission erred in retaining separate formulas for calculating cellular service contours over land and water.² PetroCom asks the Commission to amend its rules to permit all carriers to use the land formula over water.³ Amending the rules as PetroCom requests is not supported by record evidence and will harm the public interest by making it more likely that land-based cellular customers will set up on the Gulf provider networks and incur exorbitant roaming and per minute charges.

A. PetroCom's request is based on erroneous conclusions about the record evidence in this proceeding.

In support of its request, PetroCom states that there is record support for using a uniform formula and that an allegedly lightly refuted study (the Dennis Study) performed by an engineer

¹ Cellular Service and other Commercial Mobile Radio Services in the Gulf of Mexico, WT Docket No. 97-112, Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90-6, *Report and Order*, FCC 01-387 (released January 15, 2002).

² Cellular Service and other Commercial Mobile Radio Services in the Gulf of Mexico, WT Docket No. 97-112, Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90-6, Petition For Partial Reconsideration, filed April 3, 2002 (hereinafter "PetroCom Petition").

³ *Id.*, at 13. Alternatively, PetroCom asks the Commission to apply the water formula for land-based carriers' contours.

for a Gulf carrier demonstrates that the two-tiered approach gives land-based carriers an advantage.⁴ Both of these conclusions are in error.

PetroCom mistakenly assumes that because some land-based cellular providers supported a Commission proposal for a new hybrid contour formula, there is widespread support for applying either the land- or water-based contour formulas for any cellular contour that touches Gulf waters. In making this argument, PetroCom erroneously represents the comments filed by one of Verizon Wireless' predecessors in interest, GTE Service Corporation ("GTE"). In its petition, PetroCom notes that GTE stated, "that all contours primarily serving Gulf waters should be calculated in the same manner."⁵ It uses the GTE comments and comments by other cellular providers to support its conclusion that there is widespread support for its single propagation formula proposal.⁶

In GTE's case, this conclusion is misleading at best. While GTE did support using a water-based formula for some land-based contours, the language PetroCom failed to cite from GTE's comments makes clear that GTE's comments were intended only to apply to land-based contours that primarily serve Gulf waters. Moreover, GTE's comments were made in the context of its proposal to allow land-based providers to extend their license areas 25 to 50 miles into the Gulf. Because under this proposal, coverage in the Gulf would be achieved through land-based cell sites that primarily serve Gulf waters, GTE concluded that the water formula should apply to

⁴ *Id.*, at 13-19.

⁵ *Id.*, at 6, *citing* Comments of GTE Service Corporation, June 2, 1997, at pp. 12-13.

⁶ PetroCom Petition at 5-10, and 15.

these cellular contours alone.⁷ GTE did not support the Commission's proposed hybrid contour formula, using the land-based carrier formula for Gulf carriers, or using the water-based formula for land-based cell sites primarily used to serve land areas. Verizon Wireless objects to the liberties taken by PetroCom in construing GTE's comments to support its position. Verizon Wireless likewise does not believe that PetroCom can infer that other land-based cellular providers' comments directed at the Commission's hybrid proposal can be read to support PetroCom's request to adopt the land-based formula for Gulf providers.

PetroCom's conclusions regarding the Dennis Study are also incorrect. According to PetroCom, the Dennis Study was commissioned by the other Gulf cellular service provider, Bachow/Coastel, in support of its request to apply the water formula to land-based contours within 35 miles of the Gulf. The Dennis Study argues that because the theoretical best server line, where signal strength between neighboring carriers is equalized, allegedly occurs as much as 20 kilometers offshore, the land-based providers' signal strength overpowers that of the Gulf providers and prevents Gulf providers from serving their customers. According to PetroCom, Mr. Dennis concludes that the water-based formula more accurately predicts the propagation factors prevalent on land near the Gulf coast and that the water formula should therefore be used to calculate land-based contours.⁸ PetroCom claims that the Dennis Study forms the basis for adopting its proposal and that only AllTel took exception to the study. PetroCom is wrong on both counts.

⁷ GTE Comments, filed June 2, 1997, at 12-13.

⁸ PetroCom Petition at 4-5.

First, the Dennis Study, if accepted as true, at most supports applying a water-based formula to land-based contours. Nothing in the Dennis Study, or anywhere else in the record, justifies PetroCom's primary request: that the FCC apply the land-based formula contours to water-based contours.

Second, the Dennis Study has been widely refuted by the cellular industry. Contrary to PetroCom's assertions,⁹ on February 28, 2001 a coalition of land-based cellular providers including AllTel, AT&T Wireless, MobileTel, Inc., Telepak, Inc., and Texas RSA 20 B2 Limited Partnership submitted an *ex parte* letter refuting the Dennis Study.¹⁰ Shortly thereafter, Verizon Wireless, a member of land-based cellular coalition, submitted an *ex parte* letter attacking the foundation of the Dennis Study.¹¹ Moreover, the general conclusion of the Study, that land-based providers have an advantage that must be rectified, has been repeatedly challenged throughout this proceeding by real-world evidence showing that Gulf providers regularly capture traffic on Gulf coast beaches.¹²

⁹ *Id.*, at 10 ("None of the land carriers except Alltel . . . took exception with the Dennis Study").

¹⁰ *Ex parte* Letter to Magalie Roman Salas, Secretary, FCC, from Glenn S. Rabin, Assistant Vice President, AllTel Corporation, submitted February 28, 2001, at p. 10-12.

¹¹ *Ex parte* letter to Magalie Roman Salas, Secretary, FCC, from Andre J. Lachance, Regulatory Counsel, Verizon Wireless, submitted April 2, 2001 (hereinafter "April 2 Ex Parte") at 3-4 (asserting that the evidence on which the Dennis Study was based was gathered with a design to ensure the intended results).

¹² *See, e.g.*, April 2 Ex Parte at 1-3 (discussing record evidence showing how Gulf providers regularly capture subscriber traffic on land).

B. Granting PetroCom's request will harm the public interest by increasing the likelihood that Gulf-based providers will capture subscriber traffic on land.

Amending the rules to require land- and water-based contours to use the same formula will either increase the water-based carriers' signal strength at the coastline (if the land formula is applied to Gulf providers) or weaken the land-based carriers' signal strength at the coastline (if the water formula is applied to land-based providers). In either case, the result would be to increase the likelihood that Gulf-based providers would capture subscriber traffic on land.

PetroCom does not cite any record evidence that refutes the FCC's findings and demonstrates that the land-based formula more accurately depicts coverage in Gulf waters, nor does any exist. Rather, the record demonstrates that under the two formula approach, Gulf providers regularly capture land-based subscriber traffic, particularly on beaches where large hotels and other buildings typically stand between land-based subscribers and the serving cell sites.¹³ The magnitude of this problem is enhanced by the fact that Gulf providers typically assess high per minute and roaming charges on those land-based subscribers unfortunate enough to have calls captured by the Gulf providers. Any rule change that strengthens the Gulf providers' signals relative to land-based cellular providers' signals would increase the likelihood that Gulf-based providers would capture land-based providers' subscriber traffic; a result clearly not in the public interest.

II. THE COMMISSION SHOULD RULE THAT LAND-BASED PCS PROVIDERS ADJACENT TO THE GULF CAN PROVIDE SERVICE BEYOND COUNTY LINES.

In its Petition for Reconsideration, VoiceStream argues that the Commission erred in the Report and Order by deciding that PCS providers may only provide service in the Gulf of Mexico

¹³ *Id.*, at 1-4.

beyond county lines on a secondary basis. It argues that in 1996, the Commission made clear that PCS providers bordering the Gulf are eligible to serve the Gulf and that PCS licensees bid on licenses assuming they would be able to provide service to traffic in the Gulf of Mexico.¹⁴ It argues, further, that Commission's failure to acknowledge this argument violates the Administrative Procedure Act,¹⁵ that there are valid policy reasons not to license separate PCS providers in the Gulf of Mexico,¹⁶ and that any boundaries placed on PCS licensees' service in the Gulf should be based on federal rather than state law.¹⁷

Throughout this proceeding, Verizon Wireless and its predecessors in interest have made two primary requests of the Commission. First, they sought to protect PCS providers' rights to provide service in the Gulf out to county lines. Second, citing the problems experienced on the cellular side, they sought to prevent the Commission from establishing a separate PCS licensee or licensees in the Gulf of Mexico.¹⁸ In the Report and Order, the Commission affirmed that PCS licensees may provide service in the Gulf out to county lines, and refrained from establishing any Gulf PCS licensees.¹⁹ Verizon Wireless is generally pleased with these aspects of the Report and

¹⁴ Cellular Service and other Commercial Mobile Radio Services in the Gulf of Mexico, WT Docket No. 97-112, Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket No. 90-6, VoiceStream Wireless Corporation Petition For Reconsideration, filed April 3, 2002 (hereinafter "VoiceStream Petition"), at 3, *citing Mobile Oil Telecom*, 11 FCC Rcd 4115, 4116, n.10 (April 10, 1996).

¹⁵ VoiceStream Petition at 4-6.

¹⁶ *Id.*, at 6-8.

¹⁷ *Id.*, at 8-9.

¹⁸ *See, e.g.*, Comments of Verizon Wireless, filed May 15, 2000; April 2 Ex Parte.

¹⁹ Report and Order, at ¶¶ 45-46.

Order. However, the Commission did not close the door on the possibility that it might consider establishing a Gulf-based PCS licensee at a later time.²⁰ Because the VoiceStream Petition, if granted, would foreclose this possibility and expand the rights of PCS providers to serve the Gulf of Mexico, Verizon Wireless supports the VoiceStream Petition.

²⁰ *Id.*, at ¶ 45.

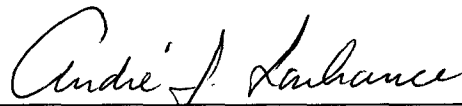
III. CONCLUSION

The Commission should act expeditiously to deny PetroCom's request to apply the land-based contour formula to contours covering Gulf waters. There is no evidence in the record suggesting that the land-based contour formula more accurately depicts contours over water. Rather, the record demonstrates that under the existing formula, Gulf-based providers regularly capture land-based traffic and apply high per minute and roaming charges to captured traffic. Applying the land-based formula would exacerbate this problem and thereby harm the public interest. The Commission should grant the VoiceStream petition. Doing so will establish land-based PCS providers as the only PCS licensees authorized to serve Gulf waters and will foreclose the possibility that the Commission will recreate the problems that exist on the cellular side by creating Gulf-based PCS licensees.

Respectfully submitted,

Verizon Wireless

John T. Scott, III
Vice President and Deputy General
Counsel - Regulatory Law
1300 I St, N.W., Suite 400 West
Washington, D.C. 20005
(202) 589-3760

By 
Andre J. Lachance
Regulatory Counsel
1300 I. Street, N.W., Suite 400 West
Washington, DC 20036
(202) 589-3775

Its Attorneys


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Certificate of Service

I hereby certify that on this 23rd day of May copies of the foregoing "Comments of Verizon Wireless" in WT Docket 97-112 were sent by first-class mail to the following parties:

Richard S. Myers
Myers Lazarus Technology Law Group
1220 19th Street, NW – Suite 500
Washington, DC 20036
Attorney for Petroleum Communications, Inc.

Brian T. O'Connor
VoiceStream Wireless Corporation
401 9th Street, NW – Suite 550
Washington, DC 20004



Sarah E. Weisman